IN THE HIGH COURT OF JUDUCATURE OF CHHATTISGARH
AT BILASPUR
M.A. No. ...953.../2003

Single Bench

APPELLANTS:
DEFENDANTS

1- SMT. SUSHILA BAI
AGED ABOUT 59 YEARS,
WD/O LAKHANLAL SONI

2- RAJKUMARI
AGED ABOUT 39 YEARS
W/O DAUCHAND SONI

BOTH R/O IRRIGATION DEPARTMENT COLONY, RUDARI, TAHSIL AND DISTT. DHAMTARI (C.G.)

3- RAJU, AGED ABOUT 37 YEARS
S/O LATE LAKHANLAL SONI

4- KU. BINDESHWARI
AGED ABOUT 33 YEARS
D/O LATE LAKHANLAL SONI

5- VIJENDRA SONI
AGED ABOUT 35 YEARS,
S/O LATE LAKHANLAL SONI

6- KU. BEBI, AGED ABOUT 31 YEARS
D/O LATE LAKHANLAL SONI

7- KU. PUSHPA
AGED ABOUT 29 YEARS
D/O LATE LAKHANLAL SONI

8- KU. CHHOTI
AGED ABOUT 27 YEARS
D/O LATE LAKHANLAL SONI

9- DINESH, AGED ABOUT 25 YEARS
S/O LATE LAKHANLAL SONI

10- RAMNARAYAN
AGED ABOUT 23 YEARS
S/O LATE LAKHANLAL SONI

ALL R/O. MAHAMAYA PARA, MAIN ROAD ARANG, TAH.- ARANG, DISTT.-RAIPUR (C.G.)

VERSUS

RESPONDENTS
PLAINTIFFS

1. SHIVLAL, AGED ABOUT 52 YEARS,
S/O PANNALAL SONI
R/O KANKALI TALAB, RAIPUR
DISTT. RAIPUR (C.G.)

2. MUNNA LAL SONI
AGED ABOUT 70 YEARS
S/O BHUSHANLAL SONI
R/O THAHRAI MOHALLA, JABALPUR,
TAHSIL AND DISTT. JABALPUR (M.P.)

P. R. No. 2221/03
Presented by Shri M.V. Pantwalpe
dated 9.10.03

3. MOTILAL SONI
AGED ABOUT 68 YEARS
S/O BHUSHAN LAL SONI
R/O THAHRAI MOHALLA, JABALPUR,
TAHSIL AND DISTT. JABALPUR (M.P.)

4. SMT. SHANTIBAI
AGED ABOUT 55 YEARS
WD/O MOHANLAL SONI

5. MADANLAL SONI
AGED ABOUT 35 YEARS
S/O MOHANLAL SONI

6. GOPAL SONI
AGED ABOUT 32 YEARS
S/O MOHANLAL SONI

7. NARESH SONI
AGED ABOUT 28 YEARS
S/O MOHANLAL SONI

8. GHANSHYAM SONI
AGED ABOUT 27 YEARS
S/O MOHANLAL SONI

9. RADHESHYAN SONI
AGED ABOUT 22 YEARS
S/O MOHANLAL SONI

10. GOVIND SONI
AGED ABOUT 20 YEARS
S/O MOHANLAL SONI

ALL ABOVE R/O THAHRAI MOHALLA,
JABALPUR, TAH & DISTT. JABALPUR (C.G.)

11. SMT. SUKHRANI
AGED ABOUT 80 YEARS
WD/O PANNALAL SONI
R/O MAUJA KURUD, MANDIR
HASAUD TAH. & DISTT. RAIPUR (C.G.)

APPEAL UNDER ORDER 43 RULE 1(t) OF

CIVIL PROCEDURE CODE

XI-HC—78

Retyped

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. No. 953 सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

05.11.2004: -

Shri Manoj Paranjpe, counsel for the appellants.
Shri G.S.Agrawal, counsel for respondent No. 1.

Heard counsel for the respective parties.

The defendants in the suit being aggrieved by the judgement delivered by the trial Court filed an application before III Additional District Judge, Raipur obviously by engaging a lawyer. Admittedly when the appeal was taken up on 22.09.1997, the counsel for the appellants reported no instructions, with the result the appeal was dismissed. According to the appellants they received a letter from their counsel which is dated 17.09.1999 and they met him on 22.10.1999 for the purpose of preparing the case namely the appeal for final hearing and at that time they were not informed about the dismissal of the appeal. In fact, in the letter the appellants were duly informed that the appeal would be taken up on 16.11.1999. After meeting the lawyer, they came to know that their appeal had been dismissed already for default on 22.09.1997. The appellants then filed an application for restoration of the appeal so that the appeal can be disposed of on merits. The application filed by the appellants was dismissed by III Additional District Judge, Raipur. Being aggrieved by the impugned order the present appeal has been filed.

There is no dispute that the appellants filed an appeal by engaging a lawyer by name Shri Shrama. It is not known as to why the said counsel reported no instruction on 22.09.1997. It is evident that the counsel did not inform the appellants about the dismissal of the appeal filed by them and he did not do so, probably he was under an impression that the

XI-HC—78

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appeal should have been adjourned for a further date. So far as the appellants are concerned, on 22.10.1999 they came to know about the dismissal of the appeal on 22.09.1997. Immediately thereafter on 25.10.1999 they filed a necessary application so that the appeal could be restored and disposed of on merits. It is not as if the appellants deliberately or intentionally did not prosecute the matter by not meeting their counsel in the year 1997 or 1998 or 1999. It is also not that the appellants have been in the habit of dragging on the matter by adopting same tactics. The dispute relates to an immovable property, therefore in the interest of justice, the appellants must be given one more opportunity.

In this view of the matter, the appeal is allowed. It is directed that the District Judge shall dispose of the same on merits on or before 31st January, 2005 and report to this Court. Needless to mention that all the parties shall co-operate so that the learned Judge will be able to comply with the directions of this Court.

Parties are entitled for certified copy of this order.

Sd/-
Chief Justice